

# **EXHIBIT 40**

**In the Matter Of:**

*HENRY v*

*BROWN UNIVERSITY*

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*PETER AMMON*

*October 25, 2024*

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1 donor-restricted, that doesn't mean 88 percent of  
2 Penn's value, endowment value was donor-restricted;  
3 correct?

4 A. Correct.

5 Q. So as of June 30th, 2023, do you know  
6 approximately how much of the value of Penn's  
7 endowment was donor-restricted?

8 A. I believe that approximately half of  
9 the endowment by value was restricted by donor or  
10 legal considerations. The other half, which would  
11 be legally, technically classified as unrestricted,  
12 was dedicated to specific uses and purposes across  
13 the University.

14 Q. So in terms of considering how much of  
15 the endowment is available for financial aid, and  
16 in rebutting Dr. Bulman's report for this  
17 paragraph, what's the import of the 88 percent  
18 statistic?

19 MR. GRINGER: Object to form.

20 THE WITNESS: The 88 percent statistic  
21 reflects the percentage of endowment units  
22 that are restricted.

23 BY MR. CIPOLLA:

24 Q. Now, out of the roughly 7700 funds that  
25 are donor-restricted, do you know how many are

1 school, but it was unrestricted, but intended to be  
2 used by the law school, that the donor wanted it to  
3 be used by the law school, and the law school -- or  
4 the med school turned around and took that money,  
5 which it couldn't actually do, but it's for the  
6 sake of hypothetical, that would be incredibly  
7 damaging to the -- Penn's relationship with that  
8 donor who gave it to the law school.

9 So there are both very practical, from  
10 the standpoint of how the University is operated  
11 and run, and also very practical considerations,  
12 limitations from how University engages with, for  
13 example, donors.

14 MR. CIPOLLA: So we've been going for  
15 about an hour, a little bit more. I think  
16 now is a good time for a break.

17 MR. GRINGER: Sure.

18 THE VIDEOGRAPHER: The time is  
19 10:40 a.m. Off the record.

20 (A recess is held from 10:40 a.m. to  
21 10:57 a.m.)

22 THE VIDEOGRAPHER: Okay. The time is  
23 10:57 a.m. Back on the record.

24 BY MR. CIPOLLA:

25 Q. All right. Welcome back, Mr. Ammon.

1                   So before the break, do you recall  
2   saying that Dr. Bulman seems to think the endowment  
3   is a big pool of money that can be spent  
4   willy-nilly on anything at any point in time?

5           A.    Yes, something to that effect.

6           Q.    Okay.  He didn't use the words  
7   "willy-nilly" in any of his reports; correct?

8           A.    Not that I saw, correct.

9           Q.    All right.  So what do you understand  
10   him to be -- like, why do you think the implication  
11   of his report is that money could be spent  
12   willy-nilly on anything at any point at any time?

13          A.    Throughout his report and his rebuttal,  
14   Dr. Bulman keeps coming back to this idea that  
15   there are all these funds -- or his idea that there  
16   are all these funds within the endowment that could  
17   be spent, in his word, or should have been spent on  
18   financial aid that are, in -- that in his telling  
19   of the story are essentially unrelated, not  
20   designated for financial aid, were designated for  
21   other things, but he seems to think that those  
22   funds could have been spent on financial aid.

23                   It's simply not how the endowment  
24   actually works.  The endowment has restricted  
25   funds, which are legal restricted, and unrestricted

1 funds. And those unrestricted funds at Penn have  
2 designated purposes for which they best be spent.

3 And doing what Dr. Bulman suggests is  
4 both impractical and disruptive -- or would be both  
5 impractical and disruptive. And, in fact, Penn's  
6 history of spending from the endowment on financial  
7 aid is such that we spend from financial aid units  
8 to support financial aid. And when Penn grew its  
9 financial aid program, Penn has gone out to  
10 actually create more endowment financial aid units  
11 to support that program.

12 MR. GRINGER: Sorry, just -- Mr. -- so,  
13 Peter, and for the court reporter, I think  
14 there may have been a transcription error,  
15 but I'm not positive 'cause the word kind of  
16 got a little blurred.

17 The court reporter has you saying,  
18 "Unrestricted funds at Penn have  
19 designated purpose for -- purposes for which  
20 they best be spent."

21 I thought I heard you say, "must be  
22 spent."

23 THE WITNESS: Correct. I didn't --  
24 yes, "must," not "best." I'm sorry.

25 BY MR. CIPOLLA:

1           Q.     So you say it would be impractic --  
2     impractical and disruptive to spend from even parts  
3     of the unrestricted endowment fund that were --  
4     because they are designated for other uses?

5           A.     So all of Penn's unrestricted endowment  
6     funds are designated for particular uses. Penn --  
7     when Penn spends -- when Penn increased its  
8     endowment support for financial aid during the  
9     period in question, Penn actually first temporarily  
10    increased the target spending rate, and then went  
11    out and created fundraise to create additional  
12    financial aid units to support that growth in  
13    financial aid.

14                This is consistent with how Penn and  
15    the -- and the endowment work, that there are units  
16    that support -- as I discussed earlier, there  
17    are finan -- there are endowment units that are  
18    unrestricted, but designated to support specific  
19    parts of the University. For example, the health  
20    system where much of the endowment is unrestricted,  
21    but designated for the health system.

22                Similarly, there are undesignated --  
23    or, sorry, unrestricted units across other parts of  
24    the University that are designated for specific  
25    purposes, and the spending is designated for those

1 specific purposes. Penn has obligations,  
2 commitments, budgets that need to be met with --  
3 planned for. And it would be, as I -- as you  
4 noted, as I said, impractical, disruptive to -- and  
5 not consistent with how Penn has spent for  
6 financial aid historically.

7 Q. Does the disruption turn on part how  
8 much money would have been needed to support more  
9 financial aid under Dr. Bulman's analysis?

10 MR. GRINGER: Object to form.

11 THE WITNESS: So Dr. Bulman's  
12 analysis -- Dr. Bulman does some analysis  
13 that says the defendants could have spent  
14 10 percent more on financial aid. This is  
15 flawed in multiple dimensions.

16 First of all, as discussed in the  
17 disclosure report, Penn's financial aid units  
18 actually just maintain purchasing power  
19 through the period in question. Meaning that  
20 spending was as high as possible and still  
21 barely maintained our goal of maintaining  
22 purchasing power on those units.

23 Had we, as Dr. Bulman suggests we  
24 should have, increased the entire financial  
25 aid budget by 10 percent and spent that out